No. 89-1035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

SEABOARD SYSTEM RAILROAD, INC.,
Petitioner,

v.

WILLIAM L. CALDWELL,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Virginia

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Virginia Code section 8.01-265 is unconstitutional because it prohibits a dismissal for forum non conveniens on behalf of a defendant incorporated in the Commonwealth of Virginia and with substantial business operations there?

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(Trial Trans., Vol. II, at 166) and an expert witness, a doctor, who twice examined respondent in Jacksonville, Florida, and who maintained his office in Nashville, Tennessee. (Trial Trans., Vol. II, at 206, 210-11, 233-34.) After trial, which resulted in a verdict for respondent, petitioner renewed its motion to dismiss for forum non conveniens. The circuit court again denied the motion, again upholding the constitutionality of section 8.01-265. The court also concluded that even if a dismissal were allowed by section 8.01-265, it should be denied. In particular, the circuit court found that "the case has been heard, fully heard, with no witnesses that I know of record that did not appear because they were not able to appear because of the ruling of the Court . . . ." (Trans. of Feb. 24, 1987, at 3.) Judgment was entered for

respondent and the Supreme Court of Virginia affirmed.[1]

SUMMARY OF REASONS FOR DENYING THE WRIT

The decision below upheld Virginia Code section 8.01-265, a statute modeled on the federal transfer statute, 28 U.S.C. § 1404(a) (1982). It did not decide any question of

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[1] Petitioner's lengthy description of the docket of the Circuit Court of the City of Portsmouth is based on evidence not in the record. The precise statistics cited by petitioner were compiled after the proceedings below were concluded. Pet. Cert. at 57A-62A. Although similar statistics were presented to the circuit judge, he refused to take judicial notice of them. He did so because they represented petitioner's selective summary of facts disclosed in the judicial records in other cases. (Trans. of Feb. 24, 1987, at 6-13.) Although petitioner has repeatedly referred to these statistics on appeal, at no point has petitioner contested the circuit judge's ruling that excluded them from consideration in this case. The circuit judge, after all, was in the best position to take judicial notice of evidence about the docket of the court on which he sits.

federal law contrary to any decision of any other court. Indeed, petitioner fails to cite a single decision of this Court, or of any other court, that is in conflict with the decision below. Instead, all of the issues in this case have long since been settled by this Court, mainly in its leading decisions on the doctrine of forum non conveniens and on the procedures in state court under the Federal Employers Liability Act (FELA), 45 U.S.C. §§ 51-60 (1982). Petitioner cites no decision holding section 8.01-265, or any similar statute, to be unconstitutional, effectively conceding that the decision below does not create any conflict that must be resolved by this Court.

The decision below instead concerns matters of procedure and internal judicial administration which are of significance only within the state of Virginia. The docket of a

single state trial court, the Circuit Court for the City of Portsmouth, which petitioner discusses at such length, raises no issues of national significance.

REASONS FOR DENYING THE WRIT

I. THE DECISION OF THE SUPREME COURT OF VIRGINIA IS NOT IN CONFLICT WITH ANY DECISION OF THIS COURT OR OF ANY OTHER COURT.

Section 8.01-265 provides for transfers between the courts of Virginia, but it does not allow any case that is brought in a proper forum in Virginia to "be dismissed on the basis that there is a more convenient forum in a jurisdiction other than in the Commonwealth of Virginia." The Virginia Supreme Court held that the distinction drawn by section 8.01-265, between transfers from one court to

another within Virginia and dismissals for forum non conveniens in favor of a court outside Virginia, serves two important purposes: first, it avoids the risk that dismissals will cause the plaintiff's action to be barred in the alternative forum by the statute of limitations; and second, it furthers the policy underlying the Virginia long-arm statute of allowing personal jurisdiction to be asserted to the constitutional limits. Caldwell v. Seaboard System Railroad, Inc., 238 Va. 148, 153, 380 S.E.2d 910, 912-13 (1989); Pet. Cert. at 29A-31A.

This Court has repeatedly recognized that dismissals for forum non conveniens are a discretionary limitation upon a state's exercise of power over a defendant within its jurisdiction. Piper Aircraft v. Reyno, 454 U.S. 235, 257 (1981); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 504-507 (1947). In two

FELA cases, just like the present one, this Court has made clear that the states are free to allow or to prohibit dismissals for forum non conveniens as they see fit. Pope v. Atlantic Coast Line R.R., 345 U.S. 379, 383-87 (1953); Missouri ex rel. Southern Ry. v. Mayfield, 340 U.S. 1, 4-5 (1950). Consistently with these decisions, the states which have adopted the doctrine of forum non conveniens have recognized that they were under no constitutional compulsion to do so. E.g., Chambers v. Merrell-Dow Pharmaceuticals, Inc., 35 Ohio St. 123, 127-28, 519 N.E.2d 370, 374 (1988).[2] Likewise, in interpreting the fed-

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[2] Contrary to petitioner's characterization, Virginia did not adopt the doctrine of forum non conveniens in Virginia Code section 8.01-257. Section 8.01-257 is simply the preamble to the chapter on venue in the Virginia Code. It was enacted simultaneously with section 8.01-265, in the same comprehensive revision of Title 8 of the Code of Virginia in 1977. In any event, this question of Virginia law was resolved against petitioner by the Supreme Court of Virginia when it

eral transfer statute, 28 U.S.C. § 1404 (198-2), this Court has recognized precisely the same distinction between transfers and dismissals as the Virginia Supreme Court: "The harshest result of the application of the old doctrine of forum non conveniens, dismissal of the action, was eliminated by the provision in § 1404(a) for transfer." Norwood v. Kirkpatrick, 349 U.S. 29, 32 (1955).[3]

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concluded that Virginia recognizes the doctrine of forum non conveniens only to the extent of allowing transfers, but not dismissals. Caldwell v. Seaboard System Railroad, Inc., 238 Va. 148, 153, 380 S.E.2d 910, 912-13 (1989); Pet. Cert. at 29A-30A.

[3] These harsh consequences are real, not hypothetical. Two recent FELA cases, just like the present one, were first dismissed for forum non conveniens and then dismissed in the alternative forum under the statute of limitations. Gibbs v. Illinois Central Gulf R.R., 420 N.W.2d 446 (Iowa 1988); Reed v. Norfolk & Western Ry., 635 F. Supp. 1166 (N.D. Ill. 1986); see also Cole v. Lee, 435 S.W.2d 283 (Tex. Civ. App. 1968) (action dismissed for forum non conveniens even though it might have been barred in alternative forum by the statute of limitations).

Petitioner nevertheless contends that section 8.01-265 denies due process and equal protection. The first of these arguments ignores the fact that petitioner is incorporated in the Commonwealth of Virginia and conducts substantial business there. The Due Process Clause clearly allows a state court to exercise personal jurisdiction over a defendant who conducts substantial, continuous, and systematic business within the state, even on a claim that arose elsewhere. E.g., Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414-16 (1984); Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437, 447-49 (1952); International Shoe Co. v. Washington, 326 U.S. 310, 318 (1945). Only in an extreme case, in which the burden upon the defendant is severe, does fundamental fairness prohibit the exercise of personal jurisdiction over a defendant on grounds of inconvenience alone.

Asahi Metal Industries Co. v. Superior Court, 480 U.S. 102, 113-16 (1987). Petitioner has made no showing of extreme inconvenience in this case. On the contrary, the trial court explicitly found that this case was fully heard with no known witnesses who were unable to appear. (Trans. of Feb. 24, 1987, at 3.) As a corporation of Virginia with substantial operations there, it did not suffer any substantial inconvenience, let alone a severe burden, in defending a claim in Virginia that arose in the adjacent state of North Carolina. This fact-specific decision, in any event, would not warrant review by this Court.

Petitioner's argument under the Equal Protection Clause was put to rest by this Court in American Motorists Insurance Co. v. Starnes, 425 U.S. 637 (1976). That case upheld a Texas statute that explicitly provided for broader venue in actions against foreign

corporations than in actions against domestic corporations because it did not give domestic corporations "any appreciable advantage" over foreign corporations. Id. at 642-44. In words that apply equally well to the present case, this Court stated: "[I]t is fundamental rights which the Fourteenth Amendment safeguards and not the mere forum which a State may see proper to designate for the enforcement and protection of such rights." Id. at 644, quoting Cincinnati Street Ry. Co. v. Snell, 193 U.S. 30, 36-37 (1904). In arguing to the contrary, petitioner principally relies upon Power Manufacturing Co. v. Saunders, 274 U.S. 490 (1927), which invalidated a state venue statute that explicitly discrminated against foreign corporations. Justice Holmes, whom petitioner quotes so prominently, voted to uphold the state statute in Power Manufacturing and, more recently, that decision was

explicitly called into question in American Motorists. 425 U.S. at 645 n.6 (1976). In any event, Power Manufacturing is plainly distinguishable since section 8.01-265 does not discriminate against out-of-state corporations.

On the contrary, section 8.01-265 is completely evenhanded, in its language, purpose, and effect. It does not apply just to FELA cases. Its literal terms apply to all actions and all defendants in the courts of Virginia. The only group that feels the burden of this statute, if it is any burden at all, consists of all the residents of Virginia and all the corporations that engage in substantial, continuous, and systematic business in Virginia. It is hard to conceive of a more broadly defined group. Its members comprise virtually the entire electorate of Virginia. If they believe that section 8.01-265 works on

balance to their disadvantage, they are perfectly capable of making their case for repeal to the state legislature. There is no need for a decision by this Court on the wisdom of section 8.01-265.[4]

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[4] Not content with the facts of this case, petitioner relies upon two hypothetical cases to argue that section 8.01-265 denies equal protection. Petitioner contends that an FELA case that arose in Bristol, Virginia, but was brought in Portsmouth, could be transferred, but that a similar FELA case, which arose in the neighboring city of Bristol, Tennessee, and was also brought in Portsmouth, could not. Pet. Cert. at 9-10, 14. This argument rests on a misconception of Virginia law.

It is plain from the face of section 8.01-265 that a transfer would be allowed in both cases. In actions brought in a permissible venue, like the present one, the statute authorizes a transfer "to any fair and convenient forum having jurisdiction within the Commonwealth." Both of these cases could be transferred to Bristol, Virginia, if that were a more convenient forum. If there were personal jurisdiction in Portsmouth, Virginia, there would be personal jurisdiction in Bristol, Virginia, and that is all that is necessary for a transfer under section 8.01-265.

II. THE DECISION OF THE SUPREME COURT OF VIRGINIA DID NOT RESOLVE ANY NOVEL QUESTION OF FEDERAL LAW AND NONE OF ANY IMPORTANCE OUTSIDE VIRGINIA.

Section 8.01-265 applies only to proceedings within the courts of Virginia. It is a statute wholly concerned with the internal administration and procedure of the courts of that state. Whatever burden section 8.01-265 imposes upon the courts of Virginia or upon the residents and corporations of Virginia is a matter of purely local concern. So far from discriminating against out-of-state litigants, section 8.01-265 operates mainly, as it did in this case, to allow out-of-state plaintiffs to sue in-state defendants. The effect of the statute is fully consistent with both the letter and the spirit of the Commerce Clause and the Privileges and Immunities Clause. U.S. Const. art. I, § 8; art. IV, § 2. If

residents and corporations of Virginia are dissatisfied with section 8.01-265, they are perfectly capable of taking their case for repeal to the state legislature.

Petitioner has failed to cite any decision by any other court that holds any statute even remotely similar to section 8.01-265 to be unconstitutional. In upholding section 8.01-265, the Supreme Court of Virginia reached a decision of purely local significance. Petitioner concedes as much by presenting statistics, explicitly excluded from consideration by the trial court, about the docket of the Circuit Court for the City of Portsmouth. See note 1 supra. This one-sided presentation of statistical evidence gives no indication whatsoever of the scope of FELA litigation in state courts throughout the nation. Whatever petitioner's statistics prove, they are limited to the docket of a

single trial court in a single state. The question presented by this case is likewise limited. It is not of national importance and it does not require this Court to reexamine well-settled principles of federal law.

CONCLUSION

For the reasons stated, the Petition for Certiorari should be denied.

Respectfully submitted,

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